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11
12 UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

13 CITY OF LEAVENWORTH,
a Washington municipal corporation,

14 No. 2:22-cv-00174-TOR

15 Plaintiff/Counterclaim
Defendant,
16 v.
17 PROJEKT BAYERN ASSOCIATION,
a Washington nonprofit corporation,
18 Defendant/Counterclaimant.

DEFENDANT /
COUNTERCLAIMANT /
THIRD-PARTY PLAINTIFF
PROJEKT BAYERN
ASSOCIATION'S AMENDED
COUNTERCLAIMS AND
THIRD-PARTY COMPLAINT

19 PROJEKT BAYERN ASSOCIATION,
a Washington nonprofit corporation,

20 JURY TRIAL DEMANDED

21 Third-Party Plaintiff,

22 v.
23 LEAVENWORTH CHAMBER OF
COMMERCE, a Washington nonprofit
corporation,

24 Third-Party Defendant.

1 **AMENDED COUNTERCLAIMS AND THIRD-PARTY COMPLAINT**

2 1. Projekt Bayern Association (“Projekt Bayern”), for its Counterclaim
 3 and Counterclaim Complaint against The City of Leavenworth (the “City”) and the
 4 Leavenworth Chamber of Commerce (the “Chamber”) respectively, states as
 5 follows.

6 **I. PARTIES, JURISDICTION, AND VENUE**

7 2. Counterclaim Defendant City of Leavenworth is a Washington
 8 municipal corporation located in Chelan County, Washington.

9 3. Third-Party Defendant the Leavenworth Chamber of Commerce is a
 10 Washington nonprofit corporation with its principal place of business at 940 U.S.-2,
 11 Suite B, Chelan County, Leavenworth, Washington.

12 4. Counterclaimant Projekt Bayern Association is a Washington nonprofit
 13 corporation with its principal place of business at 10402 Chumstick Highway,
 14 Leavenworth, Chelan County, Washington.

15 5. This civil action arises under the Lanham Trademark Act, 15 U.S.C. §
 16 1125(a) and violations of Washington law. This Court has original subject matter
 17 jurisdiction over this action pursuant to 28 U.S.C. § 1331, 1338(a)-(b) and 15 U.S.C.
 18 § 1121, and supplemental jurisdiction over causes of action based on state law,
 19 pursuant to 28 U.S.C. § 1367.

20 6. Jurisdiction is proper as to Counterclaim Defendant City of
 21 Leavenworth and Third-Party Defendant the Leavenworth Chamber of Commerce
 22 because both are Washington state corporations with their offices and principal
 23 places of business in the State of Washington. Both the City and the Chamber’s
 24 wrongful acts occurred within the State of Washington.

25 7. Venue is proper in this district under 28 U.S.C. § 1391 because the
 26 Chamber transacts business in this district, a substantial part of the events giving rise

1 to Counterclaimant's claims arose in this district, and the effects of the Chamber's
2 and the City's unlawful actions are felt in this district. Further, the City originally
3 brought this case in this district.

4 II. STATEMENT OF ADDITIONAL FACTS

5 8. Projekt Bayern has been rendering, among other things, entertainment
6 services in the nature of organizing and conducting cultural festivals featuring food,
7 beverages, alcohol, live musical performances, and entertainment for children and
8 adults (the "Projekt Bayern Services") in connection with the trademark
9 LEAVENWORTH OKTOBERFEST (the "LEAVENWORTH OKTOBERFEST"
10 Mark) since August 1998.

11 9. Projekt Bayern is the owner of U.S. Trademark Registration No.
12 5,239,374 for the LEAVENWORTH OKTOBERFEST Mark (the
13 "LEAVENWORTH OKTOBERFEST Registration").

14 10. The LEAVENWORTH OKTOBERFEST Registration was placed on
15 the Principal Register of the United States Patent and Trademark office on July 11,
16 2017.

17 11. The LEAVENWORTH OKTOBERFEST Registration provides
18 conclusive evidence of Projekt Bayern's exclusive right to use its LEAVENWORTH
19 OKTOBERFEST Mark in commerce pursuant to 15 U.S.C. § 1115(b), and it also
20 provides nationwide constructive notice of Projekt Bayern's exclusive rights
21 pursuant to 15 U.S.C. § 1072.

22 12. Projekt Bayern has enjoyed continuous and exclusive use of its
23 LEAVENWORTH OKTOBERFEST Mark for its services since August 1998,
24 including the yearly production of its LEAVENWORTH OKTOBERFEST event.

25 13. Projekt Bayern has heavily invested in the advertisement and offering
26 of its Projekt Bayern Services. In fact, Projekt Bayern has invested hundreds of

1 thousands of dollars in building its LEAVENWORTH OKTOBERFEST brand
2 connected with its Projekt Bayern Services.

3 14. Projekt Bayern has also donated more than \$500,000 to improve the
4 City of Leavenworth, enhance the Bavarian theme, and help build the goodwill
5 associated with its LEAVENWORTH OKTOBERFEST Mark and the Projekt
6 Bayern Services, including a complete restoration of the iconic Gazebo in Front
7 Street Park.

8 15. Based on the continuous and exclusive use of the LEAVENWORTH
9 OKTOBERFEST Mark, and because of the extensive advertising, promotion, and
10 offering of services under the LEAVENWORTH OKTOBERFEST Mark, the
11 LEAVENWORTH OKTOBERFEST Mark has become distinctive of the Projekt
12 Bayern Services in the minds of the consuming public. In fact, people travel across
13 the country yearly to participate in Projekt Bayern's LEAVENWORTH
14 OKTOBERFEST branded events. The public recognizes the LEAVENWORTH
15 OKTOBERFEST Mark as representing the quality and value of the Projekt Bayern
16 Services, identifying the Projekt Bayern Services as coming from a single source,
17 and distinguishing the Projekt Bayern Services from services provided by other
18 sources.

19 **The City of Leavenworth and the Leavenworth Chamber of Commerce's
20 Directly Competing and Purposely Confusingly Similar Event**

21 16. Since 1998, Projekt Bayern operated its LEAVENWORTH
22 OKTOBERFEST festival in the City of Leavenworth.

23 17. On September 26, 2012, the City of Leavenworth and Projekt Bayern
24 entered into a lease agreement, under which Projekt Bayern would lease space for
25 its Projekt Bayern Services, which included the LEAVENWORTH
26 OKTOBERFEST event.

1 18. Under the 2012 Agreement, Projekt Bayern agreed to donate to the City
2 of Leavenworth \$50,000 annually during the term of the 2012 Agreement. The
3 original term of the 2012 Agreement was five years, with the possibility of automatic
4 renewal after the first five-year period.

5 19. The 2012 Agreement makes no reference to ownership of Intellectual
6 Property rights or any licenses relating to same. Instead, Paragraph III.A. of the 2012
7 Agreement specifically identifies the LEAVENWORTH OKTOBERFEST event as
8 belonging to Projekt Bayern by stating: “In exchange for the Annual
9 Donation/Compensation Payment, Projekt Bayern will have full use of the Fruit
10 Warehouse for its Oktoberfest Festival and related activities...” Exh. B at p. 4
11 (emphasis added).

12 20. There is nothing in the 2012 Agreement that suggests the City of
13 Leavenworth owns the LEAVENWORTH OKTOBERFEST event or
14 LEAVENWORTH OKTOBERFEST Mark. Instead, the 2012 Agreement simply
15 grants Projekt Bayern a right to use the property for “its” LEAVENWORTH
16 OKTOBERFEST event.

17 21. The City of Leavenworth and Projekt Bayern had a cordial business
18 relationship for many years. In fact, Projekt Bayern donated more than \$500,000 to
19 improve the City of Leavenworth and enhance the Bavarian theme.

20 22. The 2012 Agreement was renewed in 2017. Projekt Bayern continued
21 to offer its LEAVENWORTH OKTOBERFEST event in Leavenworth until 2020.

22 23. Due to the global coronavirus pandemic and the restrictions put in place
23 by the City of Leavenworth to limit the spread of the virus, Projekt Bayern could not
24 operate its LEAVENWORTH OKTOBERFEST event in Leavenworth in 2020 or
25 2021. In 2021, Projekt Bayern organized a free, street fair, or harvest festival in
26 Leavenworth.

1 24. The City of Leavenworth terminated the 2012 Agreement with Projekt
2 Bayern by letter dated March 23, 2021.

3 25. In a June 3, 2022 Press Release, the City of Leavenworth announced:
4 “Historically, October has been reserved for Oktoberfest. The City is seeking a new
5 style of partnership with an entity that will conceptualize, plan, prepare, execute,
6 evaluate and replicate a marquee event to promote the City, showcase local
7 businesses, respect community character, celebrate inclusion, and balance the needs
8 of visitors and residents in October.” (Emphasis added.)

9 26. When Projekt Bayern submitted a proposal to operate its
10 LEAVENWORTH OKTOBERFEST event in 2022, the City of Leavenworth did
11 not seriously consider Projekt Bayern’s proposal, rejecting Projekt Bayern’s final
12 proposal on the same day that it was made.

13 27. Projekt Bayern reserved Leavenworth Festhalle for its
14 LEAVENWORTH OKTOBERFEST event in 2022. Under Leavenworth Festhalle’s
15 published policies and procedures, the Leavenworth Festhalle allowed groups to
16 lease the facility for the same period that they had in the prior year. The City directed
17 the Leavenworth Festhalle’s staff to cancel Projekt Bayern’s reservations for 2022
18 in violation of Leavenworth Festhalle’s published policies and procedures.

19 28. Wanting to continue offering the Projekt Bayern Services, including the
20 LEAVENWORTH OKTOBERFEST event, in the same manner that consumers
21 were accustomed to and have come to associate the LEAVENWORTH
22 OKTOBERFEST event with, Projekt Bayern made the decision to move its event to
23 Wenatchee, Washington, a city from which it has operated shuttle buses to and from
24 its LEAVENWORTH OKTOBERFEST event for many years.

25 29. In Wenatchee, Projekt Bayern will continue to operate the
26 LEAVENWORTH OKTOBERFEST event with the same traditions and offerings,

1 including musicians and vendors Projekt Bayern hired in previous
2 LEAVENWORTH OKTOBERFEST events. Projekt Bayern is also marketing the
3 LEAVENWORTH OKTOBERFEST event in Wenatchee to the same prospective
4 visitors as previous LEAVENWORTH OKTOBERFEST events; is offering shuttle
5 bus service between Leavenworth and Wenatchee just as Projekt Bayern offered for
6 previous LEAVENWORTH OKTOBERFEST events; and will use funds from the
7 LEAVENWORTH OKTOBERFEST event in Wenatchee to promote the Old-World
8 Bavarian theme in Leavenworth and the surrounding area.

9 30. According to the City of Leavenworth's records, on August 3, 2021,
10 just twenty-two (22) seconds before the deadline, SE Productions of Seattle
11 submitted a two-page proposal for a "Leavenworth Harvest Festival / Leavenworth
12 Fall Fest / Leavenworth Fall Festival" with the following caveat: "All elements of
13 the proposed event are to be determined by a site visit and further exploratory
14 conversations with the City of Leavenworth."

15 31. On October 7, 2021, the City of Leavenworth announced, "a
16 partnership with SE Productions for the October 2022 festival and beyond in
17 Leavenworth."

18 32. After SE Productions withdrew its participation from any October 2022
19 festival, the City of Leavenworth began working with the Leavenworth Chamber of
20 Commerce with no request for proposal or bidding process.

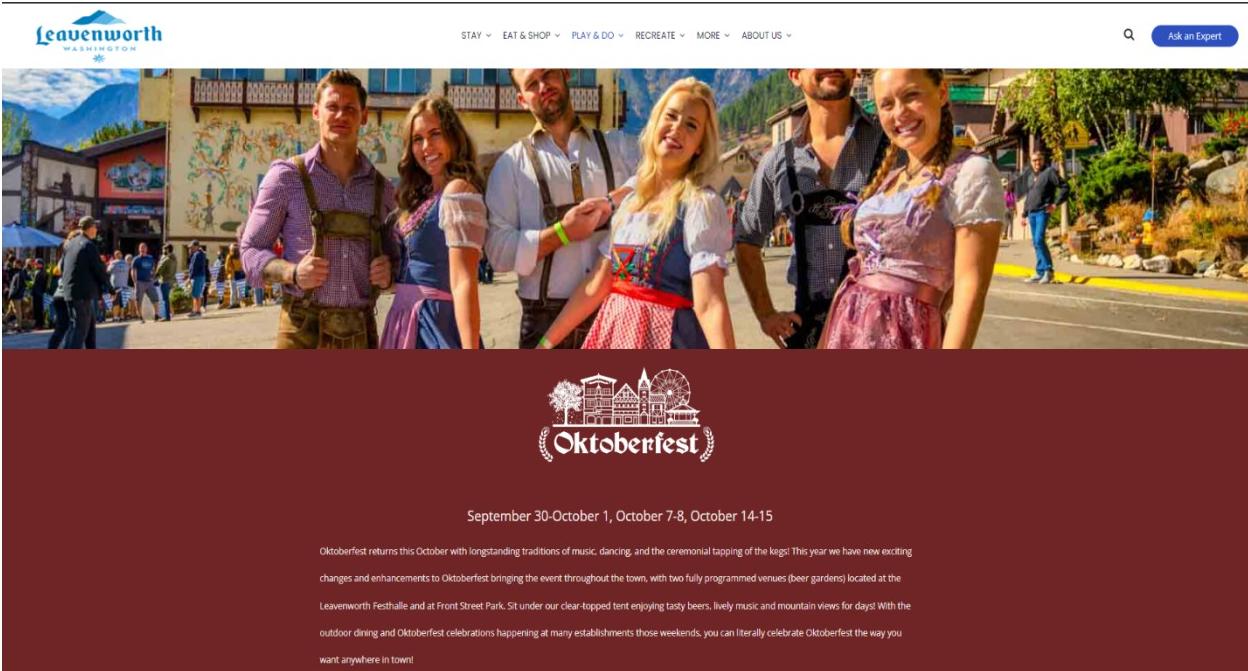
21 33. On July 11, 2022, the City of Leavenworth announced that it would
22 operate an "Oktoberfest 2022" in Leavenworth ("the 2022 Festival") to directly
23 compete with Projekt Bayern's LEAVENWORTH OKTOBERFEST event in
24 Wenatchee.

25 34. The Leavenworth Chamber of Commerce, in partnership with the City
26 of Leavenworth, will provide the 2022 Festival in a geographic area that directly

1 overlaps with the geographic area in which Projekt Bayern provides its
 2 LEAVENWORTH OKTOBERFEST event-related services.

3 35. The Chamber and the City are purposely trading off Projekt Bayern's
 4 investment in its LEAVENWORTH OKTOBERFEST Mark and the goodwill
 5 associated with the LEAVENWORTH OKTOBERFEST Mark and
 6 LEAVENWORTH OKTOBERFEST event by marketing the 2022 Festival as an
 7 event identical to Projekt Bayern's LEAVENWORTH OKTOBERFEST event.

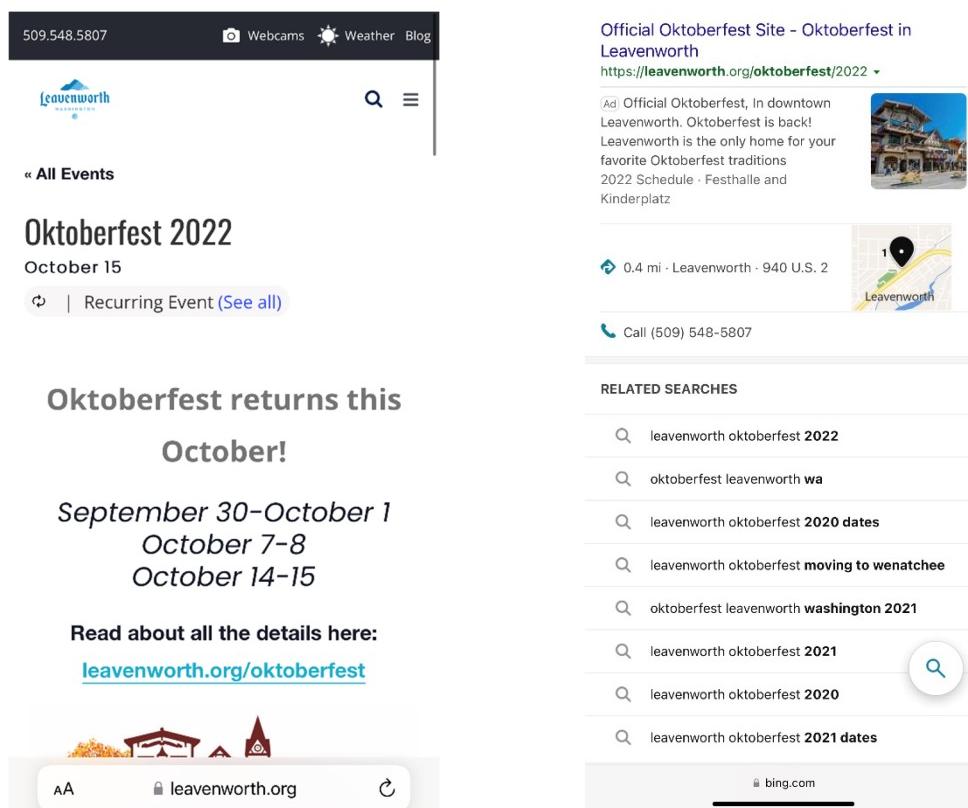
8 36. For example, in a release dated July 11, 2022, Jessica Stroller, on behalf
 9 of the Leavenworth Chamber of Commerce, wrote that "Oktoberfest returns to
 10 Leavenworth over three weekends," insinuating to consumers that Projekt Bayern's
 11 Oktoberfest, which has been the only Oktoberfest event taking place in the City of
 12 Leavenworth for the past 20 years, will be held in Leavenworth again this year. This
 13 statement is also visible on the Chamber's website for the 2022 Festival as seen
 14 below:



25 (https://leavenworth.org/oktoberfest/)
 26

1 37. The use of the word “returns” signals to consumers that Projekt Bayern
 2 will once again be providing its LEAVENWORTH OKTOBERFEST in
 3 Leavenworth, Washington in 2022. This statement will confuse consumers into
 4 believing the LEAVENWORTH OKTOBERFEST will be held in Leavenworth,
 5 Washington again in 2022 and/or there is an association between the Chamber and
 6 City’s 2022 Festival and Projekt Bayern.

7 38. As seen below, the phrases like “Oktoberfest returns” and “Oktoberfest
 8 is Back” is the focus of the Chamber’s marketing efforts and advertisements for the
 9 2022 Festival, to suggest to consumers that the 2022 Festival will be the same
 10 Oktoberfest-themed event that they have come to know and enjoy for the last 20
 11 years, i.e., Projekt Bayern’s LEAVENWORTH OKTOBERFEST:



The screenshot shows two side-by-side web pages. On the left is the official Leavenworth website's Oktoberfest 2022 page. It features a banner for 'Oktoberfest 2022' on September 30-October 1, October 7-8, and October 14-15. Below the banner is a link to 'Read about all the details here: leavenworth.org/oktoberfest'. At the bottom of this page is a small graphic of a building with a red roof and orange leaves. On the right is a Bing search results page for the query 'leavenworth oktoberfest 2022'. The top result is an advertisement from the official Oktoberfest site, which includes a photo of a building, a map showing the location, and a phone number to call. Below the ad is a list of related searches, including 'leavenworth oktoberfest 2022', 'oktoberfest leavenworth wa', 'leavenworth oktoberfest 2020 dates', 'leavenworth oktoberfest moving to wenatchee', 'oktoberfest leavenworth washington 2021', 'leavenworth oktoberfest 2021', 'leavenworth oktoberfest 2020', and 'leavenworth oktoberfest 2021 dates'. A Bing search bar is at the bottom of the search results page.

1 39. Notably, in the advertisement seen above, and focused in on below,
 2 although the words “Leavenworth” and “Oktoberfest” are separated by a period, the
 3 Chamber’s advertisement purposely puts the two words close together to
 4 subconsciously bring “LEAVENWORTH OKTOBERFEST” to the consumers’
 5 minds:

6 Ad Official Oktoberfest, In downtown
 7 Leavenworth. Oktoberfest is back!
 8 Leavenworth is the only home for your
 9 favorite Oktoberfest traditions
 10 2022 Schedule · Festhalle and
 Kinderplatz



11 The Chamber is aware of the goodwill and success associated with Projekt
 12 Bayern’s LEAVENWORTH OKTOBERFEST and LEAVENWORTH
 13 OKTOBERFEST Mark. It is using these deceptive tactics in its marketing efforts to
 14 confuse and mislead consumers into believing its 2022 Festival is somehow related
 15 to Projekt Bayern’s LEAVENWORTH OKTOBERFEST, a continuation of the
 16 same 20+ year event, and unfairly compete in the marketplace.

17 40. Further, in addition, the Leavenworth Chamber of Commerce is
 18 promoting the 2022 Festival by advertising that it will replicate popular features used
 19 in Projekt Bayern’s LEAVENWORTH OKTOBERFEST event. As seen above, the
 20 Leavenworth Chamber of Commerce’s website claims “Oktoberfest returns this
 21 October with longstanding traditions of music, dancing, and the ceremonial tapping
 22 of the kegs!” (<https://leavenworth.org/oktoberfest/>)

23 41. Over the past 20 years, Projekt Bayern has been providing an
 24 Oktoberfest experience to consumers traveling from around the country to a specific
 25 region of Central Washington. After years of providing a high quality, popular event,
 26 showcasing the region and many local vendors, consumers have come to trust that

1 the LEAVENWORTH OKTOBERFEST event rendered by Projekt Bayern will be
2 the same high-quality event they have enjoyed for years.

3 42. Based on the City's and the Chamber's advertising to date, it is apparent
4 that the City and the Chamber are trying to mimic the qualities of LEAVENWORTH
5 OKTOBERFEST that consumers have come to recognize and expect to not only
6 trade on Projekt Bayern's success, but to also confuse consumers into believing that
7 the 2022 Festival is associated with and/or sponsored by Projekt Bayern.

8 43. The Chamber is using photographs, depicting the LEAVENWORTH
9 OKTOBERFEST event rendered by Projekt Bayern, to advertise the City and the
10 Chamber's competing Oktoberfest-themed event. For example, the below, which the
11 Chamber posted, shows a picture of Projekt Bayern's LEAVENWORTH
12 OKTOBERFEST:



(https://www.wenatcheeworld.com/news/city-of-leavenworth-to-launch-new-oktoberfest-with-smaller-beer-gardens-more-family-activities/article_9a760d34-03c0-11ed-b547-7389fa5a7dab.html#:~:text=The%20city%20of%20Leavenworth%20is,more%20community%20and%20family%20friendly).

25 The above image was taken from an article posted by Wenatchee World, a
26 member of the Chamber. See <https://leavenworth.org/service-directory/advertising->

1 marketing/. The picture displays a group of individuals who attended
2 LEAVENWORTH OKTOBERFEST at Projekt Bayern's invitation.

3 44. Upon information and belief, this deceptive tactic is being done at the
4 City's direction and/or request. Projekt Bayern understands that the Chamber was
5 asked to help plan and run the 2022 Festival for the City. The Chamber therefore has
6 the City's permission to run the 2022 Festival. Because of this relationship, the City
7 likely has influence over, or must approve of, the Chamber's marketing efforts
8 relating to the 2022 Festival. Thus, the City fosters or participates in the Chamber's
9 marketing efforts.

10 45. In addition, upon information and belief, the City of Leavenworth has
11 promised to subsidize the Leavenworth Chamber of Commerce to cover expenses
12 related to the 2022 Festival in Leavenworth.

13 46. The Chamber, and the City, whether jointly, as licensor-licensee, or as
14 an agent of the other, is intentionally using the recognition and goodwill associated
15 with Projekt Bayern and Projekt Bayern's LEAVENWORTH OKTOBERFEST
16 event to launch its directly competing Oktoberfest event. Consumers will see
17 pictures like the example provided above, which depicts the festival they have long
18 recognized as originating with Projekt Bayern, and immediately assume the 2022
19 Festival is (1) being provided again by Projekt Bayern; and/or (2) associated with /
20 sponsored by Projekt Bayern. The use of pictures depicting LEAVENWORTH
21 OKTOBERFEST will therefore help cause additional consumer confusion.

22 47. The City and the Chamber are aware or should be aware that the
23 consuming public recognizes and relies on the LEAVENWORTH OKTOBERFEST
24 Mark and LEAVENWORTH OKTOBERFEST event to identify the Projekt Bayern
25 Services and to distinguish the Projekt Bayern Services from the services of others.
26

1 48. The City and the Chamber are aware or should be aware that their use
2 of the words “return” and “back” and pictures depicting the Projekt Bayern Services
3 in its marketing materials is likely to confuse, mislead, and otherwise deceive
4 consumers into believing the 2022 Festival originates from, is affiliated with, and/or
5 is licensed, sponsored, approved, or authorized by Projekt Bayern.

6 49. Further, the City and the Chamber are aware or should be aware that
7 the mimicking of the Projekt Bayern Services offered in connection with the
8 LEAVENWORTH OKTOBERFEST Mark in the offering of the 2022 Festival is
9 likely to confuse, mislead, and otherwise deceive consumers into believing the 2022
10 Festival originates from, is affiliated with, and/or is licensed, sponsored, approved,
11 or authorized by Projekt Bayern.

12 50. The City and the Chamber are aware or should be aware that the use of
13 the words “Leavenworth” and “Oktoberfest” so closely together in connection with
14 their marketing and advertising efforts for the 2022 Festival is likely to confuse,
15 mislead, and otherwise deceive consumers into believing the 2022 Festival
16 originates from, is affiliated with, and/or is licensed, sponsored, approved, or
17 authorized by Projekt Bayern.

18 51. The City and the Chamber’s deceptive marketing and advertising and
19 direct copying of the Projekt Bayern Services, including the use of phrases like
20 “Oktoberfest returns” and “Oktoberfest is Back” and displaying pictures of the
21 Projekt Bayern Services, in connection with the production of a separate, directly
22 competing festival, has caused actual confusion and is likely to cause additional
23 confusion or to cause a mistake or to deceive as to affiliation, connection, or
24 association between the City and the Chamber and Projekt Bayern.

25 52. By the aforementioned acts, the City and the Chamber have exploited
26 and sought to trade upon the reputation and goodwill developed by Projekt Bayern

1 in connection with its LEAVENWORTH OKTOBERFEST Mark and the Projekt
2 Bayern Services.

3 53. Upon information and belief, the City and Chamber's acts were and still
4 are being committed with the reckless disregard of Projekt Bayern's rights and the
5 likelihood that consumers would be confused and falsely believe that the 2022
6 Festival is provided by, licensed by, sponsored by, endorsed by, or otherwise
7 affiliated with Projekt Bayern.

8 54. The City and the Chamber's acts will likely induce consumers to
9 believe that Projekt Bayern is offering its LEAVENWORTH OKTOBERFEST
10 event in Leavenworth, or at least believe that 2022 Festival is licensed by, sponsored
11 by, endorsed by, or otherwise affiliated with Projekt Bayern. The City and the
12 Chamber's acts will also likely induce consumers to attend the 2022 Festival in the
13 mistaken belief that the City and the Chamber have affiliated with the Projekt Bayern
14 Services and will be expecting the same level of quality and service.

15 55. In fact, Projekt Bayern has already received inquiries from consumers
16 and third parties as to whether Projekt Bayern was offering or was otherwise
17 associated with the 2022 Festival. Projekt Bayern has also received communications
18 from consumers who planned to travel to the 2022 Festival, assuming that Projekt
19 Bayern was providing its LEAVENWORTH OKTOBERFEST event with the City
20 of Leavenworth.

21 56. As a result of the City and the Chamber's conduct, Projekt Bayern has
22 suffered and, unless enjoined by this Court, will continue to suffer damages to its
23 business, reputation, and goodwill.

24 57. The wrongful activities and unfair competition of the City and the
25 Chamber are wanton, willful, and deliberate.

58. On April 27, 2022, Projekt Bayern, through legal counsel, wrote the City of Leavenworth to remind the City and its mayor that Projekt Bayern owns the LEAVENWORTH OKTOBERFEST Mark and demanding that the City of Leavenworth refrain from using the LEAVENWORTH OKTOBERFEST Mark or any confusing similar marks.

59. The City of Leavenworth responded to this April 27, 2022 letter by filing this lawsuit and initiating a proceeding before United States Patent and Trademark Office’s Trademark Trial and Appeal Board, seeking to cancel Projekt Bayern’s LEAVENWORTH OKTOBERFEST Mark.

60. The City moved to dismiss Projekt Bayern’s Counterclaims on August 31, 2022. Dkt. No. 14 (“Motion to the Dismiss”). The Motion to Dismiss states that the Chamber is responsible for the deceptive advertising practices mentioned in Projekt Bayern’s Counterclaims. *See* Motion to Dismiss at pp. 5-6.

COUNT I

**FALSE DESIGNATION OF ORIGIN, FALSE DESCRIPTION, AND
UNFAIR COMPETITION UNDER 15 U.S.C. §1125(a)**

(Against the City of Leavenworth)

61. Projekt Bayern repeats, realleges, and incorporates all of the allegations made in the foregoing paragraphs of the Counterclaims as if fully set forth herein.

62. Projekt Bayern is the owner of U.S. Registration No. 5,239,374 for the mark LEAVENWORTH OKTOBERFEST. Projekt Bayern is the prior user of the LEAVENWORTH OKTOBERFEST mark/name in connection with the offering and rendering of entertainment services in the nature of organizing and conducting cultural festivals featuring food, beverages, alcohol, live musical performances, and entertainment for children and adults.

1 63. As result of longstanding and extensive use of the LEAVENWORTH
2 OKTOBERFEST trademark and wide recognition among attendees of its
3 Oktoberfest celebrations, Projekt Bayern's LEAVENWORTH OKTOBERFEST
4 Mark has become distinctive and an indication of the source of such festivities.

5 64. Because of the highly entertaining and superb quality service Projekt
6 Bayern provides to those attending its Oktoberfest event year after year, consumers
7 have come to associate the LEAVENWORTH OKTOBERFEST event with Projekt
8 Bayern.

9 65. As described above, the City is knowingly and willfully misleading and
10 deceiving consumers into believing that the 2022 Festival, being held in
11 Leavenworth, has an affiliation, connection, or association with Projekt Bayern, or
12 that the 2022 Festival is approved or sponsored by Projekt Bayern.

13 66. The City's actions described above, including falsely and misleadingly
14 describing or representing in commercial advertising and promotion of the City's
15 services as that of Projekt Bayern's, either directly or through the Chamber as its
16 agent, misrepresents the nature, characteristics, and qualities of the City's services.

17 67. For example, in a release dated July 11, 2022, Jessica Stroller, on behalf
18 of Leavenworth Chamber of Commerce, wrote that "Oktoberfest returns to
19 Leavenworth over three weekends," insinuating to consumers that Projekt Bayern's
20 LEAVENWORTH OKTOBERFEST event, which has been the only Oktoberfest
21 event taking place in the City of Leavenworth for the past 20 years, will be held in
22 Leavenworth again this year.

23 68. An advertisement for the 2022 Festival also stated that "Oktoberfest is
24 back," again, suggesting to consumers that Projekt Bayern's LEAVENWORTH
25 OKTOBERFEST event, which has been the only Oktoberfest event taking place in
26

1 the Leavenworth area for the past 20 years, will be held in Leavenworth again this
2 year.

3 69. Because of the partnership created between the City and the Chamber,
4 said statement was either (1) made at the City's direction or (2) approved by the
5 City.

6 70. Furthermore, the City is either instructing or approving others to use
7 photographs, depicting the LEAVENWORTH OKTOBERFEST event rendered by
8 Projekt Bayern, to advertise the City and the Chamber's directly competing festival.
9 The City is intentionally using the recognition and goodwill associated with Projekt
10 Bayern and the Projekt Bayern Services, specifically its LEAVENWORTH
11 OKTOBERFEST event, to launch its directly competing festival.

12 71. The City is also either instructing or approving others to use the words
13 "Leavenworth" and "Oktoberfest" closely together in connection with the marketing
14 and advertising efforts for the 2022 Festival so as to confuse, mislead, and otherwise
15 deceive consumers into believing the 2022 Festival originates from, is affiliated
16 with, and/or is licensed, sponsored, approved, or authorized by Projekt Bayern.

17 72. The City's deceptive marketing and advertising, through the Chamber,
18 including the use of phrases like "Oktoberfest returns" and "Oktoberfest is Back,"
19 displaying pictures of Projekt Bayern Services, and the mimicking of the Projekt
20 Bayern Services offered in connection with the LEAVENWORTH
21 OKTOBERFEST Mark in the offering of the 2022 Festival, has caused actual
22 confusion and is likely to cause additional confusion or to cause a mistake or to
23 deceive as to affiliation, connection, or association between the City and Projekt
24 Bayern and constitutes false designation of origin within the meaning of § 43(a) of
25 the Lanham Act, 15 U.S.C. § 1125(a).

1 73. The City's acts were without license from or permission of Projekt
2 Bayern.

3 74. The aforesaid acts constitute federal unfair competition in violation of
4 § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

5 75. As a direct consequence of City's unlawful acts and practices, Projekt
6 Bayern has suffered, will continue to suffer, and/or is likely to suffer damage to its
7 business reputation and goodwill, for which Projekt Bayern is entitled to relief.

8 76. By reason of the City's unlawful acts and practices, the City has caused,
9 is causing and, unless such acts are enjoined by the Court, will continue to cause
10 irreparable harm to Projekt Bayern for which there is no adequate remedy at law and
11 for which Projekt Bayern is entitled to injunctive relief.

12 **FALSE DESIGNATION OF ORIGIN, FALSE DESCRIPTION, AND**
13 **UNFAIR COMPETITION UNDER 15 U.S.C. §1125(a)**

14 *(Against the Leavenworth Chamber of Commerce)*

15 77. Projekt Bayern repeats, realleges, and incorporates all of the allegations
16 made in the foregoing paragraphs of the Counterclaims as if fully set forth herein.

17 78. Projekt Bayern is the owner of U.S. Registration No. 5,239,374 for the
18 mark LEAVENWORTH OKTOBERFEST. Projekt Bayern is the prior user of the
19 LEAVENWORTH OKTOBERFEST mark/name in connection with the offering
20 and rendering of entertainment services in the nature of organizing and conducting
21 cultural festivals featuring food, beverages, alcohol, live musical performances, and
22 entertainment for children and adults.

23 79. As result of longstanding and extensive use of the LEAVENWORTH
24 OKTOBERFEST trademark and wide recognition among attendees of its
25 Oktoberfest celebrations, Projekt Bayern's LEAVENWORTH OKTOBERFEST
26 Mark has become distinctive and an indication of the source of such festivities.

1 80. Because of the highly entertaining and superb quality service Projekt
2 Bayern provides to those attending its Oktoberfest event year after year, consumers
3 have come to associate the LEAVENWORTH OKTOBERFEST event with Projekt
4 Bayern.

5 81. As described above, the Chamber is knowingly and willfully
6 misleading and deceiving consumers into believing that the 2022 Festival, being held
7 in Leavenworth, has an affiliation, connection, or association with Projekt Bayern,
8 or that the 2022 Festival is approved or sponsored by Projekt Bayern.

9 82. The Chamber's actions described above, including falsely and
10 misleadingly describing or representing in commercial advertising and promotion of
11 the Chamber's services as that of Projekt Bayern's, either directly or through acting
12 as an agent for the City, misrepresents the nature, characteristics, and qualities of the
13 Chamber's services.

14 83. For example, in a release dated July 11, 2022, Jessica Stroller, on behalf
15 of Leavenworth Chamber of Commerce, wrote that "Oktoberfest returns to
16 Leavenworth over three weekends," insinuating to consumers that Projekt Bayern's
17 LEAVENWORTH OKTOBERFEST event, which has been the only Oktoberfest
18 event taking place in the City of Leavenworth for the past 20 years, will be held in
19 Leavenworth again this year.

20 84. An advertisement for the 2022 Festival also stated that "Oktoberfest is
21 back," again, suggesting to consumers that Projekt Bayern's LEAVENWORTH
22 OKTOBERFEST event, which has been the only Oktoberfest event taking place in
23 the Leavenworth area for the past 20 years, will be held in Leavenworth again this
24 year.

25 85. Furthermore, the Chamber is using photographs, depicting the
26 LEAVENWORTH OKTOBERFEST event rendered by Projekt Bayern, to advertise

1 the City and the Chamber's directly competing festival. The Chamber is
2 intentionally using the recognition and goodwill associated with Projekt Bayern and
3 the Projekt Bayern Services, specifically its LEAVENWORTH OKTOBERFEST
4 event, to launch its directly competing festival.

5 86. The Chamber is using of the words "Leavenworth" and "Oktoberfest"
6 so closely together in connection with the marketing and advertising efforts for the
7 2022 Festival so to confuse, mislead, and otherwise deceive consumers into
8 believing the 2022 Festival originates from, is affiliated with, and/or is licensed,
9 sponsored, approved, or authorized by Projekt Bayern.

10 87. The Chamber's deceptive marketing and advertising, including the use
11 of phrases like "Oktoberfest returns" and "Oktoberfest is Back," displaying pictures
12 of Projekt Bayern Services, and the mimicking of the Projekt Bayern Services
13 offered in connection with the LEAVENWORTH OKTOBERFEST Mark in the
14 offering of the 2022 Festival, has caused actual confusion and is likely to cause
15 additional confusion or to cause a mistake or to deceive as to affiliation, connection,
16 or association between the City and Projekt Bayern and constitutes false designation
17 of origin within the meaning of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

18 88. The Chamber's acts were without license from or permission of Projekt
19 Bayern.

20 89. The aforesaid acts constitute federal unfair competition in violation of
21 § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

22 90. As a direct consequence of City's unlawful acts and practices, Projekt
23 Bayern has suffered, will continue to suffer, and/or is likely to suffer damage to its
24 business reputation and goodwill, for which Projekt Bayern is entitled to relief.

25 91. By reason of the Chamber's unlawful acts and practices, the Chamber
26 has caused, is causing and, unless such acts are enjoined by the Court, will continue

1 to cause irreparable harm to Projekt Bayern for which there is no adequate remedy
 2 at law and for which Projekt Bayern is entitled to injunctive relief.

3 **COUNT III**

4 **COMMON LAW UNFAIR COMPETITION**

5 **(*as to the City of Leavenworth*)**

6 92. Projekt Bayern repeats, realleges, and incorporates all of the allegations
 7 made in the foregoing paragraphs of the Counterclaims as if fully set forth herein.

8 93. This cause of action arises under the Common Law of Unfair
 9 Competition over which this Court has jurisdiction by virtue of 28 U.S.C. § 1338
 10 and § 1367 and by the principles of supplemental jurisdiction.

11 94. Projekt Bayern is the owner of U.S. Registration No. 5,239,374 for the
 12 mark LEAVENWORTH OKTOBERFEST. Projekt Bayern is the prior user of the
 13 LEAVENWORTH OKTOBERFEST mark/name in connection with the offering
 14 and rendering of entertainment services in the nature of organizing and conducting
 15 cultural festivals featuring food, beverages, alcohol, live musical performances, and
 16 entertainment for children and adults.

17 95. Because of the highly entertaining and superb quality service Projekt
 18 Bayern provides to those attending its LEAVENWORTH OKTOBERFEST event
 19 year after year, consumers have come to associate the LEAVENWORTH
 20 OKTOBERFEST event with Projekt Bayern.

21 96. Projekt Bayern possesses common law rights in its LEAVENWORTH
 22 OKTOBERFEST Mark, which is uniquely associated with Projekt Bayern as to the
 23 source of the goods and services offered in connection with the LEAVENWORTH
 24 OKTOBERFEST Mark.

25 97. As discussed above, the City has made, directed, or specifically
 26 approved others to issue false and misleading representations to Projekt Bayern's

1 current and prospective customers through the Chamber. The City's conduct
2 constitutes unfair methods of competition and unfair and deceptive acts and practices
3 in the conduct of its trade in violation of Washington common law of unfair
4 competition.

5 98. As a direct consequence of the City's unlawful acts and practices,
6 Projekt Bayern has suffered, will continue to suffer and/or is likely to suffer damage
7 to its business reputation and goodwill, for which Projekt Bayern is entitled to relief.

8 99. By reason of the City's unlawful acts and practices, the City has caused,
9 is causing and, unless such acts are enjoined by the Court, will continue to cause
10 irreparable harm to Projekt Bayern for which there is no adequate remedy at law and
11 for which Projekt Bayern is entitled to injunctive relief.

COUNT IV

COMMON LAW UNFAIR COMPETITION

(as to the Leavenworth Chamber of Commerce)

15 100. Projekt Bayern repeats, realleges, and incorporates all of the allegations
16 made in the foregoing paragraphs of the Counterclaims as if fully set forth herein.

17 101. This cause of action arises under the Common Law of Unfair
18 Competition over which this Court has jurisdiction by virtue of 28 U.S.C. § 1338
19 and § 1367 and by the principles of supplemental jurisdiction.

20 102. Projekt Bayern is the owner of U.S. Registration No. 5,239,374 for the
21 mark LEAVENWORTH OKTOBERFEST. Projekt Bayern is the prior user of the
22 LEAVENWORTH OKTOBERFEST mark/name in connection with the offering
23 and rendering of entertainment services in the nature of organizing and conducting
24 cultural festivals featuring food, beverages, alcohol, live musical performances, and
25 entertainment for children and adults.

103. Because of the highly entertaining and superb quality service Projekt Bayern provides to those attending its LEAVENWORTH OKTOBERFEST event year after year, consumers have come to associate the LEAVENWORTH OKTOBERFEST event with Projekt Bayern.

104. Projekt Bayern possesses common law rights in its LEAVENWORTH OKTOBERFEST Mark, which is uniquely associated with Projekt Bayern as to the source of the goods and services offered in connection with the LEAVENWORTH OKTOBERFEST Mark.

105. As discussed above, the Chamber has made false and misleading representations to Projekt Bayern's current and prospective customers. The Chamber's conduct constitutes unfair methods of competition and unfair and deceptive acts and practices in the conduct of its trade in violation of Washington common law of unfair competition.

106. As a direct consequence of the Chamber's unlawful acts and practices, Projekt Bayern has suffered, will continue to suffer and/or is likely to suffer damage to its business reputation and goodwill, for which Projekt Bayern is entitled to relief.

107. Because of the Chamber's unlawful acts and practices, the Chamber has caused, is causing and, unless such acts are enjoined by the Court, will continue to cause irreparable harm to Projekt Bayern for which there is no adequate remedy at law and for which Projekt Bayern is entitled to injunctive relief.

COUNT V

VIOLATION OF WASHINGTON CONSUMER PROTECTION ACT

(As to the City of Leavenworth)

108. Projekt Bayern repeats, realleges, and incorporates all of the allegations made in the foregoing paragraphs of the Counterclaims as if fully set forth herein.

1 109. As result of its longstanding position as the exclusive provider of an
2 Oktoberfest celebration in Leavenworth, Projekt Bayern has acquired wide
3 recognition among attendees of cultural festivals.

4 110. Because of the highly entertaining and superb quality service Projekt
5 Bayern provides to those attending its LEAVENWORTH OKTOBERFEST event
6 year after year, consumers have come to associate the LEAVENWORTH
7 OKTOBERFEST event with Projekt Bayern.

8 111. As described above, the City is knowingly and willfully misleading and
9 deceiving consumers into believing that the 2022 Festival being held in Leavenworth
10 in 2022 has an affiliation, connection, or association with Projekt Bayern, or that the
11 2022 Festival is approved or sponsored by Projekt Bayern, either directly or through
12 the Chamber.

13 112. The City's actions described above, including falsely and misleadingly
14 describing or representing in commercial advertising and promotion of the City's
15 services as that of Projekt Bayern's, misrepresents the nature, characteristics, and
16 qualities of the City's services, either directly or through the Chamber.

17 113. For example, in a release dated July 11, 2022, Jessica Stroller, on behalf
18 of Leavenworth Chamber of Commerce, wrote that "Oktoberfest returns to
19 Leavenworth over three weekends," insinuating to consumers that Projekt Bayern's
20 LEAVENWORTH OKTOBERFEST event, which has been the only Oktoberfest
21 event taking place in the City of Leavenworth for the past 20 years, will be held in
22 Leavenworth again this year.

23 114. An advertisement for the 2022 Festival also stated that "Oktoberfest is
24 back," again, suggesting to consumers that Projekt Bayern's LEAVENWORTH
25 OKTOBERFEST event, which has been the only Oktoberfest event taking place in
26

1 the Leavenworth area for the past 20 years, will be held in Leavenworth again this
2 year.

3 115. Because of the partnership created between the City and the Chamber,
4 said statement was either (1) made at the City's direction or (2) approved by the
5 City.

6 116. Furthermore, the City is either instructing or approving others to use
7 photographs, depicting the LEAVENWORTH OKTOBERFEST event rendered by
8 Projekt Bayern, to advertise the City and the Chamber's directly competing festival.
9 The City is intentionally using the recognition and goodwill associated with Projekt
10 Bayern and the Projekt Bayern Services, specifically its LEAVENWORTH
11 OKTOBERFEST event, to launch its directly competing festival.

12 117. The City is also either instructing or approving others to use the words
13 "Leavenworth" and "Oktoberfest" closely together in connection with the marketing
14 and advertising efforts for the 2022 Festival so as to confuse, mislead, and otherwise
15 deceive consumers into believing the 2022 Festival originates from, is affiliated
16 with, and/or is licensed, sponsored, approved, or authorized by Projekt Bayern.

17 118. The City's actions constitute unfair and deceptive practices in
18 commerce under Washington law.

19 119. The City's actions have and continue to negatively affect the public
20 interest as consumers traveling from all around the United States are being deceived
21 into attending an event, of which they believe originates from, or is associated with,
22 Projekt Bayern, but instead, originates from the City.

23 120. As a direct consequence of the City's unlawful acts and practices,
24 Projekt Bayern has suffered, will continue to suffer and/or is likely to suffer damage
25 to its business reputation and goodwill, for which Projekt Bayern is entitled to relief.
26

121. By reason of the City's unlawful acts and practices, the City has caused, is causing and, unless such acts are enjoined by the Court, will continue to cause irreparable harm to Projekt Bayern for which there is no adequate remedy at law and for which Projekt Bayern is entitled to injunctive relief.

COUNT VI

VIOLATION OF WASHINGTON CONSUMER PROTECTION ACT

(As to the Leavenworth Chamber of Commerce)

122. Projekt Bayern repeats, realleges, and incorporates all of the allegations made in the foregoing paragraphs of the Counterclaims as if fully set forth herein.

123. As result of its longstanding position as the exclusive provider of an Oktoberfest celebration in Leavenworth, Projekt Bayern has acquired wide recognition among attendees of cultural festivals.

124. Because of the highly entertaining and superb quality service Projekt Bayern provides to those attending its LEAVENWORTH OKTOBERFEST event year after year, consumers have come to associate the LEAVENWORTH OKTOBERFEST event with Projekt Bayern.

125. As described above, the Chamber is knowingly and willfully misleading and deceiving consumers into believing that the 2022 Festival being held in Leavenworth in 2022 has an affiliation, connection, or association with Projekt Bayern, or that the 2022 Festival is approved or sponsored by Projekt Bayern.

126. The Chamber's actions described above, including falsely and misleadingly describing or representing in commercial advertising and promotion of the Chamber's services as that of Projekt Bayern's, misrepresents the nature, characteristics, and qualities of the Chamber's services.

127. For example, in a release dated July 11, 2022, Jessica Stroller, on behalf of Leavenworth Chamber of Commerce, wrote that “Oktoberfest returns to

1 Leavenworth over three weekends,” insinuating to consumers that Projekt Bayern’s
2 LEAVENWORTH OKTOBERFEST event, which has been the only Oktoberfest
3 event taking place in the City of Leavenworth for the past 20 years, will be held in
4 Leavenworth again this year.

5 128. An advertisement for the 2022 Festival also stated that “Oktoberfest is
6 back,” again, suggesting to consumers that Projekt Bayern’s LEAVENWORTH
7 OKTOBERFEST event, which has been the only Oktoberfest event taking place in
8 the Leavenworth area for the past 20 years, will be held in Leavenworth again this
9 year.

10 129. Furthermore, the Chamber is using photographs, depicting the
11 LEAVENWORTH OKTOBERFEST event rendered by Projekt Bayern, to advertise
12 the City and the Chamber’s directly competing festival. The Chamber is
13 intentionally using the recognition and goodwill associated with Projekt Bayern and
14 the Projekt Bayern Services, specifically its LEAVENWORTH OKTOBERFEST
15 event, to launch its directly competing festival.

16 130. The Chamber is also using of the words “Leavenworth” and
17 “Oktoberfest” so closely together in connection with the marketing and advertising
18 efforts for their 2022 Festival so to confuse, mislead, and otherwise deceive
19 consumers into believing the 2022 Festival originates from, is affiliated with, and/or
20 is licensed, sponsored, approved, or authorized by Projekt Bayern.

21 131. The Chamber’s actions constitute unfair and deceptive practices in
22 commerce under Washington law.

23 132. The Chamber’s actions have and continue to negatively affect the
24 public interest as consumers traveling from all around the United States are being
25 deceived into attending an event, of which they believe originates from, or is
26 associated with, Projekt Bayern, but instead, originates from the Chamber.

133. As a direct consequence of the Chamber's unlawful acts and practices, Projekt Bayern has suffered, will continue to suffer and/or is likely to suffer damage to its business reputation and goodwill, for which Projekt Bayern is entitled to relief.

134. By reason of the Chamber's unlawful acts and practices, the Chamber has caused, is causing and, unless such acts are enjoined by the Court, will continue to cause irreparable harm to Projekt Bayern for which there is no adequate remedy at law and for which Projekt Bayern is entitled to injunctive relief.

I. PRAYER FOR RELIEF

WHEREFORE, Defendant Projekt Bayern prays for relief as follows:

A. An order dismissing the City's Complaint against Projekt Bayern with prejudice;

B. An order declaring that the trademark LEAVENWORTH OKTOBERFEST is owned by Projekt Bayern;

C. An order preliminarily and permanently enjoining the City of Leavenworth and the Leavenworth Chamber of Commerce from using LEAVENWORTH OKTOBERFEST without authorization from Projekt Bayern or claiming ownership of the LEAVENWORTH OKTOBERFEST trademark;

D. An order requiring an accounting of all gains, profits, and advantages derived from the Leavenworth Chamber of Commerce's wrongful acts;

E. An award to Projekt Bayern for all gains, profits, and advantages derived by the Leavenworth Chamber of Commerce for its unlawful acts;

F. An award to Projekt Bayern for all damages caused by the Leavenworth Chamber of Commerce's unlawful acts:

G. An award to Projekt Bayern of all of its attorneys' fees and costs to the extent permitted by law; and

H. For such other and further relief as this Court deems just and equitable.

II. DEMAND FOR JURY TRIAL

Projekt Bayern demands a jury trial.

DATED this 21st day of September, 2022.

s/ James Breitenbucher
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Attorneys for Projekt Bayern Associates

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the date written below, I caused a true and correct copy of the foregoing to be delivered to the following party in the manner indicated:

Name: Rhett V. Barney, WSBA #44764 Via Electronic Mail/ECF
Address: LEE & HAYES, P.C. Via U.S. Mail
Address: 601 W. Riverside Avenue Via Overnight Courier
Address: Suite 1400 Via Facsimile
Address: Spokane, WA 99201 Via FedEx
Phone: (509) 324-9256
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Name: Robert J. Carlson, WSBA #18455 Via Electronic Mail/ECF
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Attorneys for Plaintiff City of Leavenworth

DATED this 21st day of September, 2022.

Ma Senourio

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